

LOCAL CIVIL RULE 5.7 (Proposed)

FILING AND SERVICE BY ELECTRONIC MEANS

(a) General Information

Pursuant to Rule 5(e) of the Federal Rules of Civil Procedure, the Clerk will accept pleadings and other papers filed and signed by electronic means pursuant to this rule. All papers filed by electronic means must comply with technical standards, if any, now or hereafter established by the Judicial Conference of the United States. The electronic case file system, for purposes of this rule, will hereafter be referred to as ECF.

This rule shall apply to all civil actions filed October 1, 2001, and thereafter. The Court will maintain electronic case files for all civil cases filed after that date.

(b) User Training and Registration

The Clerk's Office will provide periodic training sessions on use of the ECF system. The court will also provide on its Website an on-line tutorial demonstrating the use of the ECF system. Law firms are encouraged to have individuals responsible for electronic filing (attorney, paralegal or automation specialist) attend a live training session.

To use the ECF system, attorneys must be admitted to practice in this District, be a member in good standing, and have filed with the Clerk a completed ECF Attorney Registration form. In addition, the attorney or the attorney's firm must have a Public Access to Court Electronic Records (PACER) account and an e-mail address. Detailed registration information is available on the Court's Website (www.miwd.uscourts.gov). By submitting an Attorney Registration form, the attorney certifies that he or she has attended a live training session or has completed the on-line tutorial. Upon receipt of the ECF Attorney Registration form, the Court will issue a user identification code and a user password to qualified attorneys. All registered attorneys have an affirmative duty to inform the Clerk immediately of any change in their e-mail address. A registered attorney may not allow another person to file a document using the attorney's user identification code and password, except for members of the attorney's staff. Use of an attorney's user identification code and password by a staff member is deemed to be the act of the attorney. If a user identification code and/or password should become compromised, the attorney is responsible for notifying the ECF Help Desk immediately.

(c) Initial Papers

The filing of the initial pleading (complaint or petition), issuance and service of the summons, and payment of initial filing fees must be accomplished in the traditional manner (not electronically). Attorneys,

however, are strongly encouraged to accompany their initial filing with a diskette or CD-ROM of their papers in portable document format (PDF), so that these documents can be added to the electronic case file.

(d) Electronic Filing

(i) Filing. Registered attorneys may file pleadings and other papers (except initial papers) electronically in any civil case without leave of court, subject to the exceptions set forth below. All pleadings and other papers filed electronically must be in PDF digital format and must be submitted in accordance with the instructions set forth on the Court's Website. Attorneys are strongly urged to accompany all *paper filings* with a diskette or CD ROM of their papers in PDF digital format, so that the document can be added to the electronic case file.

(ii) Papers That May Not Be Filed Electronically. The following documents may not be filed electronically, but must be submitted in paper form:

- a. Documents filed under seal pursuant to W.D. Mich. LCivR 10.6;
- b. Rule 5 materials in habeas corpus cases;
- c. Administrative records and transcripts in social security cases and transcripts or voluminous exhibits in other administrative review cases;
- d. Handwritten papers or pleadings;
- e. An attachment or exhibit exceeding twenty-five pages in length, unless it is in digital (not scanned) PDF format. Such documents may be filed in scanned PDF format if they do not exceed twenty-five pages. Filers must not attach as an exhibit any pleading or other paper already on file with the court, but shall merely refer to that document.

(iii) Documents That May Be Filed Electronically if Accompanied by a Signed Original. The following documents may be filed electronically only if a signed original document is also filed and a copy served on all other parties:

- a. Affidavits;
- b. Declarations under penalty of perjury;
- c. Certified copies of judgments or orders of other courts.

The electronically filed version of such documents must contain an "s/ _____" block indicating that the paper document bears an original signature.

(iv) Deadlines. Filing documents electronically does not in any way alter any filing deadlines. An electronically submitted document is deemed filed upon completion of the transmission and issuance by the Court's system of a Notice of Electronic Filing (NEF). In situations where Rule 5.7(d)(iii) requires filing of a signed, original document in addition to the electronic document, the document is deemed filed upon issuance of the NEF, provided that the signed original is filed within 72 hours thereof. All electronic transmissions of documents must be completed (i.e., received completely by the Clerk's Office) prior to midnight, Eastern Time, in order to be considered timely filed that day. Where a specific time of day deadline is set by Court order or stipulation, the electronic filing must be completed by that time.

(v) Technical Failures. The Clerk shall deem the Court's Website to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon (Eastern Time) that day, in which case, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings must be accompanied by a declaration or affidavit attesting to the filer's failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay because of such technical failure. The initial point of contact for any practitioner experiencing difficulty filing a document electronically shall be the ECF Help Desk, available via phone at (616) 456-2206, or via e-mail at helpdesk@ecf.miwd.uscourts.gov.

(vi) Docket. The record of filings and entries created by the ECF system for each case constitutes the docket.

(e) Signature

(i) Attorneys. An attorney's use of the identification code and the password to submit documents over the ECF system serves as the attorney's signature on all electronic documents filed with the Court, as well as the attorney's signature for purposes of Fed. R. Civ. P. 11 and for all other purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court.

(ii) Multiple Signatures. The filer of any document requiring multiple signatures (e.g., stipulations, joint status reports) must list thereon all the names of other signatories by means of an "s/____" block for each. By submitting such a document, the filer certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filer has their actual authority to submit the document electronically. The filer must maintain any records evidencing this concurrence for subsequent production to the Court if so ordered or for inspection upon request by a party until one year after the final resolution of the action (including appeal, if any).

(iii) Judges. The electronic filing of an opinion, order, judgment or other document by a judge (or authorized member of the judge's staff) by use of the judge's identification code and password shall be deemed the filing of a signed original document for all purposes.

(f) Proposed Orders

Proposed orders may be submitted electronically or in paper form. All proposed orders submitted electronically must be in PDF format and must be: (1) attached as an exhibit to a motion or stipulation; or (2) contained within the body of a stipulation; or (3) submitted separately and identified as "proposed." If the Judge approves the proposed order, it will be refiled electronically under a separate document number.

(g) Service of Electronically Filed Documents

(i) Summons and Initial Pleading. Service of the summons and complaint or other initial pleading must be made by one of the methods allowed by Rule 4 of the Federal Rules of Civil Procedure and may not be made electronically.

(ii) Subsequent Pleadings and Papers. Although a pleading or other paper has been *filed* electronically, it must nevertheless be *served* in one of the ways allowed by Rule 5 of the Federal Rules of Civil Procedure, unless the party upon whom service is made has consented to electronic service in the particular case.

(iii) Method of Consenting. The first paper filed by each attorney must contain a legend following the attorney's signature, in which the attorney indicates whether or not the attorney agrees to electronic service in that case as follows:

I hereby consent to electronic service in this case pursuant to Local Rule 5.7.

-OR-

I do not consent to electronic service in this case.

The appearance of the first legend constitutes consent to electronic service of all future pleadings and other papers in that case, and all service in the case thereafter must be made upon the consenting attorney electronically. The failure to set forth such a legend is deemed as election not to consent. Parties are

encouraged to consent to electronic service in all cases possible. Any party not consenting to electronic service must be served in one of the methods set forth in Fed. R. Civ. P. 5. If any one or more attorneys does not elect to accept electronic service, the matter of the appropriateness of electronic service will be discussed at the Rule 16 conference.

(iv) Method of Electronic Service. When a document is filed electronically by a party, the court's system will generate a Notice of Electronic Filing (NEF), which will be transmitted by the Court by e-mail to the filer and all parties who have consented to electronic service. The NEF will contain a hyperlink to the filed document. The party filing the document should retain a paper or digital copy of the NEF, which serves as the Court's date-stamp and proof of filing. Transmission of the NEF to the registered e-mail address constitutes service of a pleading, paper, order or notice upon any attorney who has consented to electronic service in the case. After issuance of the NEF, the general public as well as any party to the litigation may access and download the filed document on the Court's PACER system except that the Clerk is empowered to prevent access to the social security number of the plaintiff in a social security case. Only service of the NEF by the Court's system is sufficient to constitute electronic service; transmission of a document by one party to another by regular e-mail does not constitute service.

(v) Effect on Time Computation. Electronic service under this rule is complete upon transmission and does not constitute service by mail within the meaning of Federal Rule of Civil Procedure 6(e). Therefore, the additional three (3) days to do an act or take a proceeding after service of a document by mail does not apply when service is made electronically.

(h) Facsimile Transmissions

The Clerk will not accept for filing any pleading or other paper submitted by facsimile transmission.